IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 48 OF 2014
IN
SUMMARY SUIT NO. 118 OF 2013

Quant Capital Pvt. Ltd. .....Plaintiff
: V/S :
Quant Transactional Services
Pvt. Ltd. .....Defendant

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Mr. D.P. Desai, Advocate for the plaintiff.
Mr. Karl F. Tamboly i/by. K. Kaushik, Advocate for the defendant.

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Coram :- Smt. R.P. SondurBaldota, J.

7th October, 2015.

P.C. :-

1). This Summons for Judgment is taken out by the plaintiff in the suit for recovery of sum of Rs.9,02,97,967/- as per the particulars of claim at Exhibits-D, F and H to the plaint. The plaintiff also claims future interest at the rate of 11% p.a. on the outstanding amount of Rs. 3,72,82,940/-. The amount claimed by the plaintiff allegedly arises out of two transactions i.e. (i)Inter Corporate Deposits ("ICD" for short), and (ii)share subscription monies.

2). The case of the plaintiff in the plaint, stated in brief is that, originally the plaintiff and the defendant were group companies. The plaintiff had from 13th August, 2010 deposited various amounts as ICD with the defendant. The amounts were to be returned with interest @ 11% p.a. Until 31st March, 2011 there was repayment of ICDs as reflected in Exhibit 'A' to the plaint. On 31st March, 2012 the plaintiff found that an amount of Rs.3,18,48,581/- was due from the defendant. The amount consisted of the principle sum of Rs.3,00,00,000/- and the interest thereon @ 12% p.a. The defendant has admitted and acknowledged the amount in it's balance sheet for the year ending on 31st March, 2012.

3). On the above pleadings, the plaintiff seeks to recover principle amount of Rs.3,42,82,940/- together with interest @ 11% p.a. totaling to Rs.3,85,02,061/- from the defendant towards ICD dues. The particulars of the claim stated at Exhibits 'D' are the principal amount outstanding on 24th January, 2013 as of Rs.3,42,82,940/- and Rs.23,10,723/- as interest @ 11% p.a. for the financial year ending on 31st March, 2012 and Rs.19,08,398/- as interest at the same rate for the period 1st April, 2012 to 24th January, 2013.

4). The plaint does not state details of the ICD of Rs.3,00,00,000/- and calculation of the interest thereon until 31st March, 2012. The plaintiff has annexed its Ledger Accounts for the periods 1st April, 2010 to 31st March, 2013. However, no attempt has been made to explain the total principal amount outstanding as on 24th January, 2013 of Rs.3,00,00,000/-. The plaintiff heavily relies upon the balance sheet of the defendant Company, a copy of which is annexed at Exhibit- C to the plaint. It is the contention of the plaintiff that the first entry of the current liabilities for the year 2011-12 for short-term borrowings as of Rs.3,19,85,400/- is the entry pertaining to the plaintiff. It is argued that the entry amounts to admission on the part of the defendant of its dues under the ISD. Exhibit-C, however, does not name the plaintiff anywhere. Hence, the entry in the balance sheet cannot be accepted as the admission of the liability by the defendant. The claim made as regards the ISD is thus seen to be not specific and clear. The plaint next refers to two different rates of interest i.e. 11% p.a. and 12% p.a. There is no explanation offered for the change in the rate of interest. It is also to be noted that, the plaintiff's claim for repayment of ISD does not arise from any written contract. Therefore, summary suit for recovery thereof cannot be maintained.

5). The second claim of the plaintiff in the plaint is for refund of the share subscription money. It is the plaintiff's case that, one Adil Patrawala of the defendant had invited the plaintiff to subscribe to the equity shares of the defendant, Company for an aggregate sum of Rs.51 crores. Accordingly, the plaintiff subscribed to the shares of the defendant and paid a sum of Rs.51 crores as subscription amount. The allotment of the share was, however, subject to sanction from the concerned authorities including SEBI. Because the process of securing sanction was consuming time, the parties agreed to keep the amount of Rs.51 crores in a fixed-deposit with YES Bank, Nariman Point Branch with return of interest at the rate of 8.5% p.a. When the defendant failed to obtain the necessary sanctions, it was mutually agreed that the defendant would, to the plaintiff, refund the entire amount of Rs.51 crores with interest accrued thereon. Accordingly, between 18th May, 2012 and 4th September, 2012 the defendant returned the amount of Rs.50,70,00,000/- leaving a balance of Rs.30,00,000/- and the interest accrued on the sum of Rs.51 crores totaling to Rs.5,47,95,506/-. consisting of the outstanding principle of Rs.30,00,000/- and interest on the share application money for the three financial years.

6). The plaintiff does not disclose the date on which the amount of Rs.51 crores was invested in fixed-deposit and the date of maturity of fixed-deposit. This claim of investing the amount in the fixed-deposits and payment of interest agreed thereon to the plaintiff, is not based on any agreement in writing. Further, the plaintiff admits that between 18th May, 2012 to 4th September, 2012 the defendant had returned the aggregate amount of Rs.50.70 crores leaving only the balance of Rs.30 lakhs to be paid. The particulars of the claim in respect of those amounts as per the plaint are at Exhibit-F, G and H. The three documents also does not make out the claim made in the plaint. The document neither mentions the date of investment of the amount, the date on which the fixed-deposit matured and the claim of plaintiff for the interest. Thus the suit as filed cannot be maintained as summary suit as the claim made therein is not specific and clear. Further, it does not arise out of written contract.

7). The defendant in it's affidavit-in-reply to the Summons for Judgment has alleged that, the plaintiff has suppressed several material facts in the plaint. The defendant claims to have paid the entire amount to the plaintiff and contends that nothing was due and payable on the date of filing of the suit to the plaintiff. The affidavit-in-reply also narrates several facts which according to the defendant are true facts of the case. There is no affidavit-in-rejoinder filed by the plaintiff to refute this claim. In the circumstances, the pleadings give rise to several triable issues as regards the amounts claimed by the plaintiff in the plaint. Hence, the Summons for Judgment is dismissed. Unconditional leave is granted to the defendants to defend the suit. The defendant shall file written statement within a period of 8 weeks from today. The suit to appear on the board for directions after 8 weeks i.e. 2/12/2015.

(SMT. R.P. SONDURBALDOTA, J)